

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of U.S. Trademark Application No.: 87613813
For the Mark: EMERSON CREEK EVENTS
Date of Application: September 19, 2017

Emerson Creek Pottery Inc.,

Opposer,

v.

**Countryview Pottery Co., and
Emerson Creek Events, Inc.,**

Applicants.

Opposition No. 91244057

OPPOSER'S FIRST SET OF REQUESTS TO ADMIT

Pursuant to Title 37, Section 2.120, of the Code of Federal Regulations and Federal Rules of Civil Procedure 26 and 36, Plaintiff requests applicants Countryview Pottery Co., and Emerson Creek Events, Inc., to admit the truth of the following facts within thirty (30) days of service by sending responses to the offices of GARFIELD GOODRUM, DESIGN LAW, 90 Canal Street, 4th Floor, Boston, MA 02114, copy via email to garfield.goodrum@gdrmlaw.net, in accordance with the below instructions and definitions.

DEFINITIONS

1. As used herein, "Applicants," "Defendants," "you" or "your" means collectively and individually Countryview Pottery Co., Emerson Creek Events, Inc., Christina Demiduk, Ron Wehrli and/or David Demiduk including all names or entities under which each has done business; any predecessors thereof and all past or present divisions, subsidiaries, or affiliates of



any of the foregoing entities; and all past or present employees, attorneys, agents, or representatives of each or of any of the foregoing entities.

2. As used herein, "Registrant," "Opposer" or "Plaintiff" means collectively and individually Emerson Creek Pottery, Inc., and/or Jim Leavitt including all names or entities under which each has done business; any predecessors thereof and all past or present divisions, subsidiaries, or affiliates of any of the foregoing entities; and all past or present employees, attorneys, agents, or representatives of each or of any of the foregoing entities.

REQUESTS TO ADMIT

1. Since at least 2002, Defendants have sold pottery created, designed and/or manufactured by Plaintiff at 5126 Stephens Road in Oswego, Illinois.
2. Defendants have purchased from Plaintiff pottery at a discount from retail prices since at least 2002.
3. Since as early as June 1, 2002, Defendants have used pottery created, designed and/or manufactured by Plaintiff to offer their tea room, café and restaurant services at 5126 Stephens Road in Oswego, Illinois.
4. The majority of Plaintiff's pottery that Defendants have sold at 5126 Stephens Road in Oswego, Illinois, has had EMERSON CREEK POTTERY printed on the pottery itself or labels affixed to the pottery.
5. The majority of Plaintiff's pottery that Defendants have used at 5126 Stephens Road in Oswego, Illinois, to offer their tea room, café and restaurant has had EMERSON CREEK POTTERY printed on the pottery itself.

6. Since at least 2017, Defendants have sold third-party pottery not created, designed and/or manufactured by Plaintiff at 5126 Stephens Road in Oswego, Illinois.
7. Defendant Countryview Pottery Co. has filed the assumed name EMERSON CREEK POTTERY with the Illinois Secretary of State's office.
8. Defendants registered the internet domain name www.ecreekpotteryandtearoom.com.
9. Defendants operate a website at www.ecreekpotteryandtearoom.com.
10. Defendants Countryview Pottery Co. and Emerson Creek Events, Inc., filed an application to register EMERSON CREEK POTTERY & TEAROOM as a trademark with the U.S. Patent and Trademark Office ("PTO") on or about September 19, 2017.
11. Defendants Countryview Pottery Co. and Emerson Creek Events, Inc., claimed first use in commerce of EMERSON CREEK POTTERY & TEAROOM at least as early as June 1, 2002, in their PTO application for this mark.
12. Defendants Countryview Pottery Co. and Emerson Creek Events, Inc., filed an application to register EMERSON CREEK TEAROOM as a trademark for "tea rooms; restaurant and café services" with the PTO on or about September 19, 2017.
13. Defendants Countryview Pottery Co. and Emerson Creek Events, Inc., claimed first use in commerce of EMERSON CREEK TEAROOM at least as early as June 1, 2002, in their PTO application for this mark.
14. Defendants Countryview Pottery Co. and Emerson Creek Events, Inc., disclaimed exclusive rights to use "tearoom" apart from the mark as a whole in their PTO application to register EMERSON CREEK TEAROOM.
15. The term POTTERY is generic for pottery goods.
16. The term TEAROOM is generic for tea rooms.

17. Defendants' EMERSON CREEK POTTERY & TEAROOM mark that they sought to register at the PTO is identical in its non-generic terms to Plaintiff's EMERSON CREEK POTTERY mark.
18. Defendants' EMERSON CREEK TEAROOM mark that they sought to register at the PTO is identical in its non-generic terms to Plaintiff's EMERSON CREEK POTTERY mark.
19. Defendants never informed the PTO of Plaintiff.
20. Defendants never informed the PTO Plaintiff's use of EMERSON CREEK POTTERY.
21. Defendants learned of the terms EMERSON CREEK and EMERSON CREEK POTTERY from visiting Plaintiff's location in Bedford, Virginia, before they offered pottery, tearoom, restaurant and event services.
22. Defendants did not come up with their EMERSON CREEK POTTERY & TEAROOM and EMERSON CREEK TEAROOM marks on their own.
23. Defendants copied their EMERSON CREEK POTTERY & TEAROOM and EMERSON CREEK TEAROOM marks from Plaintiff's EMERSON CREEK POTTERY mark.

Respectfully submitted,

EMERSON CREEK POTTERY, INC.,

by its attorneys,

GARFIELD GOODRUM, *DESIGN LAW*

February 10, 2019

By: /s/Garfield Goodrum
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CERTIFICATE OF SERVICE

I hereby certify that on February 10, 2019, I caused the foregoing OPPOSER'S FIRST SET OF REQUESTS TO ADMIT to be emailed to kmclaughlin@ma-lawpc.com and deposited in the U.S. Mails, first class service, postage prepaid and addressed to:

Kenneth McLaughlin, Esq.
495 N. Commons Drive, Suite 103
Aurora, IL 60504

Dated: February 10, 2019

/gbg/

Garfield Goodrum, Esq.